

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1850 of 1988

with

CIVIL APPLICATION NO. 3183 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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HEIRS OF RATILAL NARBHERAM SANGHVI

Versus

COMPETENT AUTHORITY & DY. COLLECTOR (ULC) & ANR.

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Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioners

(in both matters)

Shri T.H. Sompura, Asst. Govt. Pleader, for the

Respondents (in both matters)  
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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 19/04/96

ORAL JUDGEMENT

The order passed by the Competent Authority at  
Rajkot (respondent No. 1 herein) on 28th March 1984  
under sec. 8(4) of the Urban Land (Ceiling and  
Regulation) Act, 1976 (the Act for brief) as affirmed in  
appeal by the order passed by the Urban Land Tribunal at

Ahmedabad (respondent No. 2 herein) on 29th December 1987 in Appeal No. Rajkot-833 of 1984 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the predecessor-in-title (the deceased for convenience) of the present petitioners to be in excess of the ceiling limit by 5592.74 square meters.

2. The facts giving rise to this petition move in a narrow compass. The deceased filed his declaration in the prescribed form under sec. 6(1) of the Act. That form was duly processed by respondent No. 1. After observing necessary formalities under sec. 8 thereof, by his order passed under sub-section (4) thereof, respondent No. 1 declared the holding of the deceased to be in excess of the ceiling limit by 5592.74 square meters. Its copy is at Annexure A to this petition. That aggrieved the deceased. He carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-833 of 1984. It was heard along with Appeal No. Rajkot-97 of 1988. By the common appellate order passed in the aforesaid two appeals, respondent No. 2 dismissed both the appeals. Its copy is at Annexure B to this petition. The aggrieved deceased thereupon approached this Court by means of this petition under art. 227 of the Constitution of India. He breathed his last during the pendency of this petition leaving behind him the present petitioners as his heirs and legal representatives.

3. As rightly submitted by learned Advocate Shri Nanavaty for the petitioners, constructed properties could not have been included in the holding of the deceased in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. It has been urged by learned Advocate Shri Nanavaty for the petitioners that the flat situated in Tardeo, Bombay, was a constructed property in existence prior to coming into force of the Act. He has further submitted that the property being an industrial shed situated at Nasik was also a constructed property on the date of coming into force of the Act. Learned Advocate Shri Nanavaty has further submitted that one residential house is situated in Plot No. 108 in Survey No. 432 in Rajkot and that house property also cannot be included in the holding of the deceased. Learned Assistant Government Pleader Shri Sompura for the respondents has urged that there is no material on record to show or to suggest that the aforesaid constructed properties were in existence as such in an authorised manner prior to coming into force

of the Act. Thereupon on behalf of the petitioners Civil Application No. 3183 of 1996 has been filed for producing additional evidence in support of the case that the aforesaid constructed properties were in existence in an authorised manner prior to coming into force of the Act. Learned Assistant Government Pleader Shri Sompura for the respondents has urged that this additional evidence cannot be taken into consideration in this petition under art. 227 of the Constitution of India. Thereupon learned Advocate Shri Nanavaty for the petitioners makes an oral request for conversion of this petition also under art. 226 of the Constitution of India. Such oral request is accepted and this petition is treated to be also under art. 226 of the Constitution of India on the condition of payment of the deficit court-fees, if any, within two weeks from today.

4. In the civil application for additional evidence it has been urged by the petitioners that the original petitioner died quite some time ago and prior to his death he remained sick for a very long time and was residing at Bombay and it was therefore not possible for him to make any inquiry at Nasik. It transpires from the material on record that the deceased breathed his last on 31st August 1989. The impugned orders at Annexures A and B to this petition were passed on 28th April 1984 and 29th December 1987. It appears that he remained indisposed for quite some time prior to his death and it is possible that he might not have been able to produce evidence in support of his case that the aforesaid constructed properties were in existence prior to coming into force of the Act in an authorised manner.

5. It may be noted that it is not in dispute that the aforesaid constructed properties were shown as such in the declaration by the deceased in the prescribed form under sec. 6(1) of the Act. It cannot be gainsaid that the declaration in the prescribed form was to be filed with respect to the holding of the deceased as on 17th February 1976. It would therefore stand to reason that the constructed properties were in existence prior to coming into force of the Act if they were shown as such in the declaration in the prescribed form under sec. 6(1) of the Act. The additional evidence is for the purpose of reinforcing that conclusion. In that view of the matter, I think it would be in the interest of justice to allow the additional evidence to come on record.

6. Since the authorities below have decided the case in absence of the material brought on record by means of

Civil Application No. 3183 of 1996, the authorities below have not been able to take into consideration the applicability of the aforesaid binding ruling of the Supreme Court in the case of Smt. Meera Gupta (supra). It would therefore be necessary to remand the matter to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of the material on record produced as additional evidence in this case which the petitioners agree to produce before respondent No. 1. The impugned orders at Annexures A and B to this petition will have therefore to be set aside for the purpose.

7. In the result, this petition as well as Civil Application No. 3183 of 1996 is accepted. The order passed by the Competent Authority at Rajkot (respondent No. 1) on 28th March 1984 at Annexure A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 29th December 1987 inter alia in Appeal No. Rajkot-833 of 1984 at Annexure B to this petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule issued on Civil Application No. 3183 of 1996 is made absolute with no order as to costs. Rule issued on this petition is also made absolute to the aforesaid extent with no order as to costs.

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